

**ASSEMBLY BILL**

**No. 2532**

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**Introduced by Assembly Member Wagner**

February 24, 2012

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An act to amend Section 2923.5 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2532, as introduced, Wagner. Mortgages and deeds of trust: foreclosure.

Existing law regulates the terms and conditions of mortgages and deeds of trust secured by real property. Existing law provides that a mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default until 30 days after initial contact with the borrower is made, as specified, or 30 days after satisfying specified due diligence requirements.

This bill would make a nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2923.5 of the Civil Code is amended to  
2     read:  
3     2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized  
4     agent may not file a notice of default pursuant to Section 2924  
5     until 30 days after initial contact is made as required by paragraph  
6     (2) or 30 days after satisfying the due diligence requirements as  
7     described in subdivision (g).

(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and *to* explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default filed pursuant to Section 2924 shall include a declaration that the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h).

(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that either:

(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.

(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made.

(d) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(f) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, the borrowers financial situation

1 and options for the borrower to avoid foreclosure. That contact  
2 made at the direction of the borrower shall satisfy the contact  
3 requirements of paragraph (2) of subdivision (a). Any loan  
4 modification or workout plan offered at the meeting by the  
5 mortgagee, beneficiary, or authorized agent is subject to approval  
6 by the borrower.

7 (g) A notice of default may be filed pursuant to Section 2924  
8 when a mortgagee, beneficiary, or authorized agent has not  
9 contacted a borrower as required by paragraph (2) of subdivision  
10 (a) provided that the failure to contact the borrower occurred  
11 despite the due diligence of the mortgagee, beneficiary, or  
12 authorized agent. For purposes of this section, “due diligence”  
13 shall require and mean all of the following:

14 (1) A mortgagee, beneficiary, or authorized agent shall first  
15 attempt to contact a borrower by sending a first-class letter that  
16 includes the toll-free telephone number made available by HUD  
17 to find a HUD-certified housing counseling agency.

18 (2) (A) After the letter has been sent, the mortgagee,  
19 beneficiary, or authorized agent shall attempt to contact the  
20 borrower by telephone at least three times at different hours and  
21 on different days. Telephone calls shall be made to the primary  
22 telephone number on file.

23 (B) A mortgagee, beneficiary, or authorized agent may attempt  
24 to contact a borrower using an automated system to dial borrowers,  
25 provided that, if the telephone call is answered, the call is  
26 connected to a live representative of the mortgagee, beneficiary,  
27 or authorized agent.

28 (C) A mortgagee, beneficiary, or authorized agent satisfies the  
29 telephone contact requirements of this paragraph if it determines,  
30 after attempting contact pursuant to this paragraph, that the  
31 borrower’s primary telephone number and secondary telephone  
32 number or numbers on file, if any, have been disconnected.

33 (3) If the borrower does not respond within two weeks after the  
34 telephone call requirements of paragraph (2) have been satisfied,  
35 the mortgagee, beneficiary, or authorized agent shall then send a  
36 certified letter, with return receipt requested.

37 (4) The mortgagee, beneficiary, or authorized agent shall provide  
38 a means for the borrower to contact it in a timely manner, including  
39 a toll-free telephone number that will provide access to a live  
40 representative during business hours.

1 (5) The mortgagee, beneficiary, or authorized agent has posted  
2 a prominent link on the homepage of its Internet Web site, if any,  
3 to the following information:

4 (A) Options that may be available to borrowers who are unable  
5 to afford their mortgage payments and who wish to avoid  
6 foreclosure, and instructions to borrowers advising them on steps  
7 to take to explore those options.

8 (B) A list of financial documents borrowers should collect and  
9 be prepared to present to the mortgagee, beneficiary, or authorized  
10 agent when discussing options for avoiding foreclosure.

11 (C) A toll-free telephone number for borrowers who wish to  
12 discuss options for avoiding foreclosure with their mortgagee,  
13 beneficiary, or authorized agent.

14 (D) The toll-free telephone number made available by HUD to  
15 find a HUD-certified housing counseling agency.

16 (h) Subdivisions (a), (c), and (g) shall not apply if any of the  
17 following occurs:

18 (1) The borrower has surrendered the property as evidenced by  
19 either a letter confirming the surrender or delivery of the keys to  
20 the property to the mortgagee, trustee, beneficiary, or authorized  
21 agent.

22 (2) The borrower has contracted with an organization, person,  
23 or entity whose primary business is advising people who have  
24 decided to leave their homes on how to extend the foreclosure  
25 process and avoid their contractual obligations to mortgagees or  
26 beneficiaries.

27 (3) A case has been filed by the borrower under Chapter 7, 11,  
28 12, or 13 of Title 11 of the United States Code and the bankruptcy  
29 court has not entered an order closing or dismissing the bankruptcy  
30 case, or granting relief from a stay of foreclosure.

31 (i) This section shall apply only to mortgages or deeds of trust  
32 recorded from January 1, 2003, to December 31, 2007, inclusive,  
33 that are secured by owner-occupied residential real property  
34 containing no more than four dwelling units. For purposes of this  
35 subdivision, "owner-occupied" means that the residence is the  
36 principal residence of the borrower as indicated to the lender in  
37 loan documents.

1     (j) This section shall remain in effect only until January 1, 2013,  
2     and as of that date is repealed, unless a later enacted statute, that  
3     is enacted before January 1, 2013, deletes or extends that date.

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